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148

MESSAGES OF GOVERNOR COKE.

VETO MESSAGE

March 1, 1875.¹⁵

Hon. R. B. Hubbard, President of the Senate:

Sir—I return herewith, without my approval, Senate bill No. 463,
being “An act to limit the amount to be issued in bonds of the State

¹⁵Senate Journal, 487-504.

to the International Railroad Company, and to adjust all matters of difference between the State and said company."

I decline to approve this bill for the following reasons:

1. The provision for sale to the International Railroad Company, of four installments of State bonds, of \$80,000 each, to be made just at the time that the interest on the subsidy bonds, proposed to be delivered to the company, falls due, and being about the amount of the semi-annual interest that would be due on the bonds claimed by the company for the road already constructed, suggests the idea that these bonds, or their proceeds, are intended to pay that interest, although it is not expressly so stated in this bill. If such be the meaning and intention of the provision, this bill has not been passed by two-thirds majority of both Houses as is required by section 6, article 12, of the constitution, it being in substance an appropriation.

Again, if the sale of these bonds to the company is intended to pay the interest on the subsidy bonds, the provision clearly violates section 23, article 12, of the constitution, which requires that adequate means be provided by the Legislature, when a debt is created, for the payment of the accruing interest, and two per cent. as sinking fund. This provision would not pay, but compound and increase the interest. This clause of the constitution has a two-fold purpose, one to check extravagance in the representation, by bringing the burden down immediately on the people, and the other, to prevent the undue accumulation of debt, by requiring gradual extinguishment. Both would be defeated by the provision in question.

Again, if this provision be not one for the payment of interest on the subsidy bonds, it is foreign to the purpose of this bill, and is an object not expressed in its title, and violative of section 17, article 12, of the constitution. The draftsman of this bill seems to have been conscious of the unconstitutionality of the provisions for the sale of these bonds, since in addition, there is a clause providing for a tax upon the people to pay the interest and sinking fund of the subsidy bonds.

2. So much of the bill as provides that the company shall pay into the State Treasury two per cent. of the gross earnings of so much of the road as receives the benefit, per mile, of the subsidy, until the same, together with the taxes of every description, paid by the company, shall reimburse the State for the principal and interest of the subsidy bonds, is a delusion and a pretense, without substance and calculated only to mislead. The taxes spoken of, are the lawful taxes which all property in the State must pay, and I cannot see the point in making any mention of them in the bill. The two per cent. of gross earnings is comparatively a pittance. The gross earnings

of the consolidated International and Great Northern Railroads for 1847, were less than one and a quarter millions; only half of that, say for two hundred miles, was earned by the International, or about \$600,000.00 in round numbers. Two per cent. on that amount is \$12,000.00, while the annual interest and sinking fund on the subsidy bonds, to be paid by the people, will amount to \$300,000.00. Suppose the International Railroad completed, and the gross earnings five times as much as in 1874, it would be only about \$60,000.00 per annum. But this is not the worst part of it; even for this pittance, the bill gives the State not only no security, but it would be paid only so long as the company chose to pay it. It will be remembered that the two per cent. of the gross earnings is not a lawful tax imposed by the State on the company. It would be unconstitutional, as a tax, because a greater per cent. than is levied on other property, and not uniform, as taxation is required to be. The bill, if approved, would become a law only upon acceptance by the company. The State would acquire the right to the two per cent of gross earnings by contract with the company, and in that contract would occupy exactly the position that an individual who had contracted with company. Now, it will be remembered that the charter of the International Railroad Company expressly authorizes the company to mortgage its franchises, its road beds, stock, property, etc., and in pursuance of that authority the company has mortgaged every mile of its road constructed, and that to be constructed, with first mortgages of \$16,000.00 to each mile, and second mortgages of \$10,000 per mile, making \$26,000.00 to the mile, with a first lien to secure them. The interest on these mortgages is payable semi-annually, and if the company should fail to meet it promptly, at any time when due, the mortgaged have the right to foreclose their lien and sell the road, its franchises and property. If such sale should be made, the purchaser of the road would take it discharged of the incumbrance in favor of the State for the two per cent. gross earnings. Being a subsequent incumbrance, the State's rights under this bill would be cut off and destroyed, the State's bonds would be out in the hands of innocent purchasers, and the people would have them to pay. That the road will be sold out no one doubts, whether it receives the bonds or not. If it is not, it will be an extraordinary exception to the general rule, for I cannot remember a railroad in or out of Texas, at this time, that has not been sold out, and some of them several times. This feature of the bill is a sham, destitute of even the doubtful merit of plausibility. If compelled to approve either the original bill, which gave the three millions openly and directly to the company, or this amended bill which pretends to reimburse the people,

I do not hesitate to say that I would prefer the former, because the latter would operate as a fraud upon all who would be deceived by it.

3. After stripping the bill of its delusive drapery, of words, its worthless promise to pay two per cent. of its gross earnings to the State, its unconstitutional provision for the company to purchase \$320,000 of State bonds, we find it a square outright donation to the International Railroad Company of \$3,000,000, with a clause providing for taxation on all the property and occupations in Texas, to pay the interest and principal, the first installment of interest being due on the first day of July, 1875. In its first section the bill acknowledges the binding obligation on the State, of the act of the Twelfth Legislature, granting the original subsidy. I cannot join in an approval of that act. I have always thought that in the passage of that act the Legislature exceeded its constitutional power in proposing to tax the people for the purpose of making a donation to the International Railroad Company. There is no dispute over the proposition that legitimate taxation is a mode of raising revenue for public purposes only, and that the people can not be constitutionally taxed for the promotion of a private object. I do not believe that a railroad, owned and operated for private benefit, is a public use, to aid in constructing or maintaining which the people may be taxed, simply because the public desires an incidental benefit from it. I can see no difference in the principle between aids to railroad corporations and to other enterprises, such as mills, factories, stage lines, etc., which are beneficial and even indispensable to the public, which no one has ever contended were public uses for which taxes may be levied. The fact that the State delegates her right of eminent domain to enable a railroad company to acquire title to a road bed by paying just compensation for it, and reserves power to regulate freights and charges over the road, no more makes it a public corporation, than is a line of hacks in a city run under a license from the city authorities, whose rates of charges are regulated by city laws, for these reasons a public use or institution which the people may be taxed to support. I hold the belief that railroad companies are private corporations, with no more right to invoke the taxing power of the government in their behalf, than has an association of citizens incorporated or unincorporated, engaged in any other business for private profit from which the public desires an incidental benefit. Nor can I subscribe to the doctrine resorted to, to sustain the exercise by the Legislature of the taxing power in aid of railroads, that the Legislature may do anything, and everything against which no special prohibition is found in the constitution, but believe with Judge Storey, who in a celebrated case says: "That government can scarcely be deemed free where the

rights of property are left solely dependent on the legislative will," and that "the people ought not to be presumed to part with rights so vital to their security and well being without very strong and direct expressions of such an intention." If there is any limit to legislative power, where are we to look for it, if the property or money of the people may be taken from them and given as a donation to one man or an association of men, to be used for private profit.

The statute laws of Texas fix the status of railroad companies as private corporations. Second Vol. Paschal's Digest, Art. 5934.

In the celebrated case of the People vs. Salem, decided in 1870, by the Supreme Court of Michigan, Judge Cooley, one of the most profound constitutional lawyers in America, the author of a work on constitutional limitations, which will be a monument to his greatness as long as free government lasts—delivering the opinion of the court, held that "a corporation created for the purpose of constructing a railway, to be owned and operated by the corporators, is a private corporation, and the road when constructed will not be a public highway, except in a very qualified sense, as it accommodates the travel and traffic of the public, and it is therefore no more a public object than any other private enterprise which also supplies a public want, or furnishes to the public a convenience. Although an incidental benefit may accrue to the public from a private enterprise, yet that will afford no ground for imposing burdens upon the public by way of taxation in behalf of such enterprise." Judge Cooley's opinion in this case has never been answered, and in my judgment, is unanswerable. It may be remarked that Justice Christiancy, recently elected to the Senate of the United States, delivered an able opinion in the same case, fully sustaining the views of Judge Cooley. Chief Justice Campbell, in the same case concurring, used this language: "Taxation is only lawful to enable the government to fulfill its public duties, and to pay such expenses as are incidental to public business. There is necessarily a considerable discretion to determine what means may be desirable to enable the government to do its work creditably, but a power to tax one citizen for the private emolument of another, upon any theory of mere incidental advantage to the general prosperity of large or small communities, can only rest on a foundation of absolute and irresponsible power to make favorite classes and citizens, and make the whole body of taxpayers tributary to them: No such power can be tolerated in a republic, and no hint of such a power is to be found in our constitution."

Again, in 1870, the Supreme Court of Wisconsin, in the case of Whitney vs. Fond du Lac county, uses this language: "The question is as to the power of the Legislature to raise money or to authorize

it to be raised by taxation, for the purpose of donating it to a private corporation. We held in *Curtis vs. Whipple*, that the Legislature possessed no such power, and the conclusion in that case, we think follows inevitably in this from the principles stated in the opinion."

In *Olcott vs. The Supervisor*, the Supreme Court of the United States, Justice Strong delivering the opinion of the court, reviews the *Wisconsin* case above mentioned, and combats the conclusions established in it, but it is a noticeable fact, that the Chief Justice and Justices Miller and Davis, perhaps the ablest judges on that bench, dissent from the opinion of the court as delivered by Justice Strong. Indeed one cannot help observing in an examination of the case on this subject, that those which sustain the taxing power of the Legislature, are almost universally decided by divided courts, and rely on adjudged cases, while but few of them combat and many of them concede the correctness of the principle which denies the power, but yields to what they take to be the weight of authority. The cases relied on to support the taxing power of the Legislature, are also believed without exception, to be those where the subsidy had been voted by the people, and went before the courts with the moral support derived from that fact. Judge Cooley says in the case above quoted: "The best judgment of the legal profession so far as I have been able to judge, has always been against this species of railroad aid, and there has been a steady and persistent protest which no popular clamor could silence against decisions which support it. This protest has of late been growing stronger instead of fainter, and if the recent decisions are alone regarded, the authority is with the protest. But whether this is so or not, is not of controlling authority here. We are embarrassed by no decisions in this State, and are at liberty therefore to consider this question on principle, and when the legal principle which should govern a case, stands out in bold relief, it is manifestly more in accord with a proper discharge of judicial duty that we should reach it with directness, than that we should shut our eyes to the principle and blindly follow where others have blindly led." Will not the Supreme Court of Texas take the same view when this question is presented before them for decision? Many other cases could be cited in support of my views on this question, but those given above are sufficient to present the point. The growing tendency to class legislation, to the extension of the powers of government, to additional modes of interference with rights of person and property, to the building up of great corporation interests, whose power over the government is to be feared, cannot be better checked, than by an unyielding restriction of the taxing power to legitimate governmental purposes, and such uses as it is the duty of the gov-

ernment to provide for. The people can be protected from exactions for the enrichment of the few, only by an adherence to this principle. Holding these opinions, and in view of the conflict between the greatest judicial minds of the country over the questions involved, I expressed in my first message, the opinion that the original grant of the subsidy to the International Railroad Company, was of extremely doubtful constitutionality. I then felt, and now feel, an earnest desire to settle this controversy in some way acceptable to the International Railroad Company, that would be acquiesced in by the people. I, at the same time, advised against such a measure as is embodied in this bill, on the ground that it would be as obnoxious to constitutional objections as the original act of the Twelfth Legislature, and that it would be no settlement; that it would be simply a shifting of the trouble into another shape more obnoxious and complicated than that it is now in; that its immediate tendency would be to injure the credit of the State, and depreciate her securities, while ultimately, it might cover the State with the dishonor of repudiation, and as the only final and conclusive mode known to me of disposing of the whole subject, and eliminating it from the field of political discussion, recommended a reference of it to the courts for adjudication. This recommendation was made in view of the only proposition of adjustment ever offered by the company, which in substance is that embodied in this bill, and while believing that utterly impracticable, I also believed it as results have shown correctly, the only one the company would entertain or consider.

The convictions then expressed are unchanged, except that they have been strengthened. The bill before me, so far from being a final settlement of the controversy, I am more than ever satisfied, if it becomes a law, is the beginning of a contest more bitter and determined, more excited in its character, and indefinitely more injurious in its consequences, than any we have yet seen, or have reason to fear from any other course of dealing with the subject. If bonds are issued in accordance with this bill, in defiance of a public sentiment, which for five years has been crystalized in opposition to it, which denies your right to issue them, and avows a determination never to pay them, I can but regard the act as a trap and a snare for the unwary who may be seduced into an investment in them, and as the initial step to the possible, not to say probable dishonor of Texas, and the utter destruction of her credit. The people will not stand the additional taxation imposed by this bill without inquiring in the courts into its validity. They are now clamoring for a reduction of taxes, and in some portions of the State are unable to pay the present assessment. So far from being

able to reduce the taxes, the receipts in the treasury for the present fiscal year will be insufficient to meet the expense of the government, and you are now considering whether you will fund the floating debt or issue and sell bonds to pay it. On the first day of September, 1876, \$257,000 of the principal of our bonded debt will be due, and on the first day of January thereafter, \$125,000 more of it will be due, and must be promptly paid. The Comptroller estimates that \$330,000 per annum is necessary to pay interest on the existing public debt. This bill will nearly double that debt. When the present floating debt is funded into interest-bearing shape, as ought to be done during this session, if this bill should become a law, about \$700,000 would be required to pay the interest on the public debt, while the State's revenues the present year, after deducting the one-fourth ($\frac{1}{4}$) school fund, amounts only to about \$950,000 for defraying all expenses of the government of every character, including interest on the public debt. Money must be raised outside of our ordinary revenues to pay the expenses of this session of the Legislature, and of the constitutional convention, and for repair of public buildings; for construction of two new penitentiaries; for enlargement of the lunatic asylum, and for frontier defense. The great bulk of the property in Texas is inert and unproductive. The people of Massachusetts can more easily pay one and a half ($1\frac{1}{2}$) per cent than those of Texas can one-half of one per cent. tax.

This bill would send out the tax gatherer to lay an additional burden upon the people already staggering under as heavy a load of taxation as they are able to bear. No one doubts but that they will contest its validity. As this contest must come, I hold that the honor of the State imperatively demands that her bonds shall not issue until the question is determined, so that if they must issue they will go out bearing the pledge of our people for their redemption. I do verily believe that, to issue bonds as provided in this bill, and send them forth to the world, invested with all the insignia of verity, pledging the faith and credit of Texas, with such a contest impending before one installment of interest could be paid, would evince a recklessness and want of appreciation of the value of the State's credit and financial honor, that at once would inflict upon her the most serious injury. If, as would certainly be the case, pending the litigation which would ensue, the State should make default in payment of interest on the bonds, all her securities would depreciate in the market, and if the litigation should eventuate in favor of the taxpayers, the bonds which, if issued, should never be questioned, would be repudiated. Texas bonds, after that would be worth less, and the infamy of repudiation would forever rest on the State. It is

said that the people will not repudiate the bonds, if we will issue them—that they will pay them rather than bring dishonor on the State. In other words, that by a species of legislative legerdemain, the representatives of the people should place their constituents in a position where, *volens volens*, right or wrong, they would be compelled to pay in order to save the honor of the State. In the first place, I do not believe that any action we can take will control the determination of the people on this subject, and in the next, have no hesitation in saying that in a representative government such an argument should find no advocates. It is precisely on this process of reasoning that this company sought, and the Twelfth Legislature granted, the original subsidy; that mountains of debt have been piled on all the State and National governments, during the past decade, have been perpetrated; that rings and powerful combinations, composed of men of great wealth and political influence, by the liberal use of money and other means, in the manufacture of a factitious pressure of a false clamor, of an unreal and fraudulent public sentiment for the occasion, have controlled governments and representatives against the will and interest of the people. It is on this argument, aided by the benefits and blandishments which the power of capital can control, that governments in these latter days are diverted from legitimate channels, seduced from their alliance to the people, and subordinated to the interest of rings, jobbers and plunderers. While the great importance of settling this question is admitted, I deem it of infinitely greater moment that it be established beyond question; that the people of Texas can and will control their government against all such influences. The agencies, which for weeks past have beleaguered this Capitol like an investing army, in the interest of the International Railroad Company, are not those of the taxpaying people of Texas. Let us not mistake their clamor for the voice of our constituents. If these influences are once seated in power in Texas, no man can tell when, if ever they will be dislodged, and a debauched government and plundered people will be the inevitable results. Influences like these once revealed in power in the lobbies of this Capitol, and the people trembled for consequences they were powerless to avert. The corruptions of that time are still fresh in our memories. The sewers of a plague stricken city are not more unclean than were the channels through which the legislation of the country flowed. The brood of troubles hatched out during that period of corrupt lobby domination, still vex and oppress the people, and to-day we are dealing with the chiefest among them. I ask that we draw upon our bitter experience of that period for wisdom to guide us to-day, and that we permit no influence, no clamor, no combination, no cunningly

wrought delusion on the subject of State credit, and no coalition of individual and local, with corporation interests, to either seduce or drive us into a measure which, if executed, will sorely oppress the general mass of the people, and if successfully resisted will cover the State with the disgrace of repudiation.

The International Railroad Company has made no proposition, and has uniformly refused to entertain or consider one which does not involve an issuance of bonds and an annual collection of money from the people, and a consequent increase of taxes. Their friends have denounced and voted down a proposition to submit the question to the people, and another to refer the controversy to the courts for adjudication. They have voted down a bill granting twenty sections of land to the mile, and exemption from taxation for twenty years. They have, in fine, refused every offer of compromise or adjustment except that one which will put the grip of the tax-gatherer and a demand for his money upon every taxpayer; yea, upon every widow and orphan in the State. It is said that the necessities of the company constrain them to demand money or its equivalent; that they must go into bankruptcy, and the company be sold out if not immediately relieved. If this be true, I can see no difference to the State, whether this or another company build the road; and, besides, if somebody must be sold out, I prefer that the misfortune should fall on the company, rather than on the people. I had hoped that some plan which would bring no additional burden on the people, would have been acceptable to the company as a basis of settlement; but being disappointed, feel that the State occupies ground upon which her honor is unassailable. No detriment need be feared to the credit of the State. No State or people ever lost their credit, or had it injured, from too much caution in putting out their bonds. It is a reckless inconsiderate creation of debt and issuance of obligations which arouses the suspicion and excites the alarm of capital. If this bill should become a law, and bonds are issued in conformity with its provisions, I am informed from a source thoroughly posted, one on which the Governor of Texas has a right to call for information on this subject, the correctness of which information I do not question, that the certain and immediate effect would be marked and decided depreciation of Texas bonds, of every character, arising from three considerations: 1st. The great increase of the public debt. 2nd. The suspicion naturally resting on any securities of a State whose authorities are inconsiderate and reckless enough to issue bonds in defiance of a public sentiment pledged to resist their payment, and against which legal questions of the gravest character, most seriously affecting their validity, are certain to be made. And 3rd.

Because of an impression which would prevail, that the government of Texas had yielded to the power of a great corporation, and was destined to be plundered, as all States have been that have been dominated by that sort of influence. The way to build up and preserve the State's credit, is to ponder well before issuing a promise to pay; but once issued, to meet it promptly and liberally; certainly never to issue one when any doubt of its payment exists, or any question affecting its validity remains unadjusted. The bonds of Texas are now worth ninety (90) cents in New York, and steadily advancing although for four years past, and most fiercely within the last twelve months, she has been assailed by the partisans of the International Railroad Company, in and out of the State, with the charge of repudiation. It seems that impartial and sensible men who have money to invest, have taken a different and more correct view. The credit of Texas is in her own keeping, and as long as her people, as contradistinguished from corporations and their partizans, control the government, it is in safe hands.

Much has been said and written by over-zealous advocates of the payment of this subsidy, of the good faith of the company, and of the moral obligation resting on the State. I am unable to perceive the force of their assertions in this regard, or to concur in their conclusions. A brief recital of the facts attending the origin of this claim, is all that is necessary to vindicate the State against the oft repeated slander of having acted in bad faith in refusing to issue bonds. On the 5th day of August, 1870, when the Legislature, composed for the most part, of strangers to the State and people of Texas, chosen at an election in which less than one-fourth of the taxpayers of the State were allowed to vote, occupied the halls of the Capitol, the agents of the International Railroad Company by the most fraudulent and corrupt means procured the enactment of the charter under which they make the claim. The charter grants \$10,000 per mile for the construction of a road from Jefferson to Laredo, on the Rio Grande, and exemption from taxation for five years, (which they have enjoyed). Feeling doubtless, that whenever the people of Texas came into possession of the government they would resent this great outrage perpetrated upon them when defenseless, and frustrate this fraudulent attempt to fleece them, the effort was made in this charter to put the whole matter beyond and out of the reach of the people, or of any subsequent Legislature. For this purpose, although the constitution provides that no money shall be drawn from the Treasury, except in pursuance of an appropriation, and that no appropriation shall be made for a longer term than two years; in order to avoid having to come before any subsequent

Legislature, for an appropriation to pay the interest on the bonds, this charter provides that for thirty years the Comptroller shall annually assess a sufficient tax upon all the property and occupations in the State to pay the interest and sinking fund upon the subsidy bonds, have it collected and placed in the Treasury, subject to the order of the Governor, who shall pay it to the bondholders. The people are not trusted; any subsequent Legislature, that they might elect, are not trusted to make an appropriation; the charter is so constructed as to be self-sustaining, without the aid, and against the will of the people or Legislature, and if the mandamus case decided last summer, had resulted in their favor, the plan would have been successful. This is the only law on the statute book of Texas, marked by that peculiarity since the organization of the government, as it is the only law ever enacted in Texas, which imposes taxes on the people to pay for the construction of a railroad. From the day of the enactment of this charter by the Twelfth Legislature, to the present hour, the world and especially the International Railroad Company, has been notified in every way and by every means through which popular feeling and determination could find expression, that the people of Texas would resist the payment of this subsidy.

The administration under which the charter was enacted refused to issue bonds under it on the first application to them. Contemporaneous with the passage of the charter, public meetings were held in various counties in the State, and the indignation of the people and their determination never to pay the subsidy set forth in resolutions which were published throughout the country. The press teemed with denunciation of the fraud, and denials of the power of the Legislature to impose this debt on the people. The taxpayers' convention of 1871, the greatest body of representative men who ever assembled in the State, denounced it. A large body of eminent representative men from every portion of the State in 1870, in a memorial to Congress, praying that body to guarantee to Texas a republican form of government, denounced that charter. The House of Representatives of the Thirteenth Legislature, through a select committee, solemnly held the charter void, because in excess of constitutional power. The last session of this Legislature refused any relief, except to submit the question to the court. There has been one continuing unending protest from the people of Texas against the power of the Twelfth Legislature to grant that subsidy, and the fraud used in procuring it, from the hour of its enactment to this time. If these be facts, and it is believed they cannot be controverted, I cannot see where the equity of the company comes in, or

the moral obligation resting upon the State. I cannot see the good faith of the company complying with their part of the contract, and the bad faith of the State in refusing to issue bonds of which so much is said; on the contrary, I see fraud which cannot be the foundation either of an equity or an obligation. I see an advantage taken by a powerful combination of capitalists of a disfranchised people, when they were powerless, for the purpose of "making a good thing."

I can see that this combination has attempted to weave a legal mesh around the people for the purpose of coercing this subsidy from them, without their consent and against their will. I see nothing in these things calling for the gratitude of the people, or placing them under moral or equitable obligation; but most decidedly the reverse. The proposition to open the courts of the State to the company, with a pledge that the State will abide and perform the judgment, if against her, which has been refused, is assuredly a proper one, in order to ascertain whether any legal obligation rests on them to pay this subsidy. If the people have any rights which this company should respect, or any other alternative than to yield to their imperious dictation, this offer should have been gratefully accepted. In considering this general question with a view to its adjustment, if possible, I view it alone from the standpoint of expediency, as a question of State policy, one involving neither the honor, credit, nor good faith of the State, which she may deal with as her interests seems to require. Regarding it in this light, with all the admitted advantages of the road, the company has never yet signified its willingness to accept any proposition, which, in my judgment, when weighed in the balance with the countervailing objections, is not inadmissible on the score of public policy, leaving out of the estimate the question of the power of the Legislature to accede to this demand.

The objection made to a submission of this controversy to the courts for determination, that the State will be subjected to the risk of having to pay the subsidy on the entire line of the road, amounting to six or seven millions of dollars, is not sustained by the facts. At the special instance and request of the president of the International Railroad Company, and through the agency of his supporters and friends, the Fourteenth Legislature enacted a law, approved on the first day of May, 1874, to be found on page 75 of the Special Laws of that session, granting to that company twenty sections of land per mile for that portion of their line, west of San Antonio, in settlement of their claim against the State for bonds. This act is absolute and unconditional. It, in addition, relieves the company from building the road east of Jefferson, thus leaving open

the controversy over the subsidy on that part of the line, between Jefferson and San Antonio, three hundred and seventy miles, which at \$10,000 per mile, if the State should lose the suit and have it to pay, would sum up \$3,700,000, and accrued interest.

This is the largest judgment that could be rendered against the State, if the company should recover all they claim.

A reference to the courts would risk only about seven or eight hundred thousand dollars more than this bill proposes to give them absolutely.

The judicial department of the government is the only proper authority to settle this matter. If the claim of the International Railroad Company is valid as this bill asserts it to be, legislative jurisdiction and functions were exhausted in the passage of the original act by the Twelfth Legislature. If invalid, this Legislature having no greater power than the Twelfth, cannot give it validity, as is attempted in the bill before me. This is said to be a compromise measure, but instead of acting within the scope of its admitted powers, the Legislature in the passage of this bill assumes and exercises the very powers, the exercise of which by the Twelfth Legislature has produced the controversy they are attempting to settle. The company will accept no other terms than such as do involve the exercise of these powers. It follows then that the Legislature cannot settle the question, hence the necessity for a reference to the courts or to the people. In an adjudication of this controversy by the courts, is in my judgment, to be found the proper solution not only of the controversy with the International Railroad Company, but of the claims of Western Texas to benefits to be derived from a construction of the road, for which, in common with other portions of the State, that section must be taxed to pay, whatever if anything is paid to the company. If the subsidy should be held valid, the whole line from Jefferson to San Antonio would be built, and the whole State be taxed uniformly to pay it. If held invalid, nothing would be paid by any portion of the State. Under the present bill a large majority of those who are best informed believe that the road would never cross the Colorado. It is my deliberate conviction that it would not, or if it should, that the inducement to do so would be found outside of any offered in this bill. The only hope that I can see for it to do so, lies in a reference to the courts, and the chance of maintaining the legality of the subsidy. I know that distinguished and able gentlemen in the two houses, who have left no stone unturned in their labors for Western interests, think differently, but the opinion is fixed and strong. This opinion is based on the fact that no time is named in the bill within which the com-

pany shall accept the provisions of the act. They may accept within a month, or a year, or any other indefinite time. Section 4 of the bill provides that on the acceptance of the provisions of this act by the stockholders of the company, it shall be the duty of the Governor to deliver subsidy bonds to the president of the company, at the rate of \$10,000 per mile, for so much of the road as may then be completed, and that the remainder shall be paid rateably per mile on the balance of the road between Jefferson and San Antonio, as it is constructed, reserving \$300,000 until it is finished to San Antonio. Now suppose the company, before accepting the provisions of the act, go to work and build seventy miles of the road between Jefferson and Austin; this, at \$10,000 per mile, together with the 200 miles already built, at the same figures, will take up the \$2,700,000 of the subsidy, and the remaining \$300,000 which is held as security that they build to San Antonio, they can well afford to forfeit, since it will cost not less than \$600,000 to bridge and cross the Colorado. The company would lose nothing; the interest on bonds for the road already constructed is fixed to run from January 1st, 1875, and on the road to be hereafter constructed, from the date of the inspector's approval of the road. It might be the interest of the company to build the road west of the Colorado, but the inducement to do it would have to be found elsewhere than in this bill. It is my candid conviction that in declining to approve this bill, I serve no section of the State with more fidelity than Western Texas, which, in my judgment, it deludes with a hope of benefits never to be realized, while its burdens would be certain and substantial. Believing that the only possible mode of settling this controversy within the control of the Legislature, is to confer jurisdiction on the courts for the purpose. I reiterate my first recommendation that that course be pursued. If the International Railroad Company will abandon the demands they have persisted in making for bonds and taxation on the people, which the Legislature have not the power to comply with, and will accept in settlement that which we are competent to give, I will meet them in a spirit of liberality which will leave them no cause to complain. If they will accept it in settlement, I not only recommend but urge that exemption from all taxation be granted them for twenty-five years, that twenty sections of land per mile on the entire line of their railroad be granted them; and am willing to go further, and in order to enhance the value of the scrip, to relieve them from the burden of locating the alternate school sections as all other railroad companies are required to do. The exemption from taxation will cost the people nothing; the capital exempted will be simply that which they will bring and in-

vest here. If, however, to have bonds or nothing, they will get nothing while I occupy the Executive Office of Texas, if a proper exercise of the constitutional power of the Governor will prevent it, except it be under the sanction of a judicial decree, or the ordinance of a constitutional convention. I respectfully ask a reconsideration of this bill, and if the company will accept such settlement as the Legislature have the power to make, that the settlement be made, and the terms given them be liberal; if they will not, then that the courts be opened to them for suit. I hope the Legislature will not adjourn without doing one or the other.

RICHARD COKE.